

**MINUTES
of the
SECOND MEETING
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**July 25-26, 2007
Santa Rosa High School
717 South Third Street
Santa Rosa**

The second meeting of the Courts, Corrections and Justice Committee was called to order by Senator Cisco McSorley, co-chair, on July 25, 2007 at 9:34 a.m. at Santa Rosa High School in Santa Rosa.

Present

Sen. Cisco McSorley, Co-Chair
Rep. Al Park, Co-Chair
Sen. Rod Adair
Rep. Thomas A. Anderson
Rep. Joseph Cervantes
Rep. Gail Chasey (7/25)
Sen. Carroll H. Leavell
Rep. Antonio "Moe" Maestas
Sen. Richard C. Martinez
Sen. Lidio G. Rainaldi
Rep. William "Bill" R. Rehm
Rep. Peter Wirth

Advisory Members

Sen. Mary Jane M. Garcia
Sen. Clinton D. Harden, Jr.
Sen. Linda M. Lopez (7/25)
Rep. Jane E. Powdrell-Culbert
Rep. Mimi Stewart (7/25)
Rep. Thomas E. Swisstack

Guest Legislator

Rep. Danice Picraux (7/25)

Absent

Sen. Kent L. Cravens
Sen. John T.L. Grubescic
Rep. Eric A. Youngberg

Sen. Ben D. Altamirano
Rep. Elias Barela
Rep. Daniel R. Foley
Sen. Gay G. Kernan
Rep. W. Ken Martinez
Sen. William H. Payne
Sen. John C. Ryan
Sen. Michael S. Sanchez
Rep. Sheryl Williams Stapleton
Sen. James G. Taylor
Rep. Teresa A. Zanetti

(Attendance dates are noted for members not present for the entire meeting.)

Staff

Maha Khoury
Evan Blackstone
Randi Johnson

Guests

The guest list is in the meeting file.

Wednesday, July 25**Committee Business**

Senator McSorley welcomed committee members and guests.

Representative Jose A. Campos welcomed committee members and guests.

The committee approved the minutes from the first meeting.

Corrections and Public Safety Budgets, Growth and Expenditure Trends

Renada Peery-Galon, senior fiscal analyst, Legislative Finance Committee (LFC), provided the committee with a report on the New Mexico Corrections Department's (NMCD) increasing budget. Specifically, Ms. Peery-Galon pointed out that between FY03 and FY08, the operating budget of the NMCD increased by 38.7%, or \$83.7 million, and its general fund appropriation increased by 45%, or \$81.6 million. Also, in FY05, FY06 and FY07, NMCD received millions of dollars in supplemental funds from the State Board of Finance general fund operating reserve and from supplemental and deficiency appropriations for budget shortfalls.

Ms. Peery-Galon informed the committee that, based on FY05 data, the average cost to house an inmate in a public or private state correctional facility is \$81.35 a day or \$29,695 a year. In FY07, there was an unusual inmate population decrease. The male inmate population dropped by 4.1% and the female inmate population decreased by 10.4%. Ms. Peery-Galon told the committee that in FY09 the budget will include a new correctional facility in Clayton, New Mexico. The estimated cost of this facility is \$14.7 million based on a per diem rate of \$75.00 per day and a guarantee in the contract that at least 90% of the facility will be filled. Ms. Peery-Galon also informed the committee that the crime labs are in huge need of DNA technicians. During general committee questions, she elaborated that New Mexico is paying DNA technicians competitively; however, on the East Coast, technicians are able to make six-figure salaries.

Corrections Performance Audit: Review of Prison Planning, Private Prison Contracts and Monitoring, Medical and Mental Health Services

Charles Sallee, senior performance auditor, LFC, provided the committee with an overview of the LFC's prison performance audit, its findings and recommendations. Mr. Sallee noted that, despite great improvement since the 1980 riot, there is still room for improvement in three key areas: costs, planning and medical services.

With regard to costs, Mr. Sallee told the committee that state spending on private prison contracts has increased 57% since 2001, largely due to contract increases. New Mexico has the highest rate of private prison use in the nation and the NMCD pays significantly higher rates to house inmates than other states for similarly classified prisoners. He suggested that private prisons should be required to justify annual price increases based on performance and improve management of savings created by staff vacancies.

With regard to planning, Mr. Sallee told the committee that New Mexico's approach to prison planning and construction is not in the taxpayers' best interest because the NMCD lacks active long-term planning to accommodate inmate growth. Rapid deterioration and inefficient design make New Mexico's public prison facilities increasingly expensive to operate. New Mexico's use of county jail statutes as the basis for building private state prisons results in the state paying for a prison it will never own.

With regard to medical services, Mr. Sallee noted that the NMCD needs better oversight to contain medical costs and ensure the provision of adequate care. The NMCD's previous medical contractor, Wexford, had insufficient record keeping and reporting. There was a lack of meaningful communication between the NMCD and Wexford and the quality of medical care was inadequate.

Joe Williams, secretary of corrections, reported to the committee that the NMCD is working on all of the areas recommended by the LFC report. The NMCD created a contract compliance bureau and hired a new medical director, Dr. Steven Vaughn, who is realigning the health care programs and will be monitoring the medical contracts. Secretary Williams explained to the committee that the state has a good balance of private prison use, and the higher rates compared with other states have to do with the level of violence that security faces. Secretary Williams conceded that the NMCD's planning methods are disjointed and promised to develop a 10-year plan by November 2008. More capital outlay is needed for the older, inefficient prisons to make them work. Secretary Williams and the new medical director stated that they do not oppose the opiate replacement pilot program at the women's prison as long as it is properly funded.

Town of Clayton on the GEO Prison Contract

Robert Beck, attorney for the town of Clayton, addressed the committee and thanked Maha Khoury for assisting Clayton in negotiating the contract with GEO. He described GEO's initial approach to the contract and how Ms. Khoury provided information and ammunition that helped negotiate a better agreement.

Adult Parole Board Performance Audit

Susan Fleischmann, CPA, performance auditor, LFC, provided the committee with an overview of parole board operations, the status of video conferencing readiness and the effectiveness of the internal processes and record keeping. The LFC recommended that the parole board issue certificates in a more timely fashion, update decision-making criteria,

uniformly apply parole decision-making criterias, participate in training that encompasses information technology, enhance communications with the NMCD and develop an IT strategy.

Ella Frank, executive director of the Adult Parole Board, informed the committee that the board's function is misunderstood. The board conducts hearings almost every day of the month and board members are only paid per diem. The board hears almost 4,000 cases a year and the members' job duties are rapidly expanding. Many of the LFC audit issues have been addressed and the board has been in constant contact with the new director of IT services. The parole board needs at least 30 more officers and more office space. Certificates are not late to the prisoners, only late by the board's internal standards.

Committee Business

The committee discussed Governor Bill Richardson's July 20, 2007 press release proposing that new rules relating to clandestine drug laboratories be brought before the Environmental Improvement Board. The proposed rules appear to be similar to three bills that were introduced and failed in the 2007 session. The committee agreed, with one objection by Senator Rod Adair, to seek an attorney general opinion on whether the executive has legal authority to adopt those rules.

Alternatives to Incarceration for Women Offenders

Maureen Saunders of the Women's Justice Project (WJP) provided the committee with a report on the status of Camino Nuevo and the treatment of women inmates. She noted that Camino Nuevo is being run as a level 5 institution, though it is supposed to be level 1 or 2. Secretary Williams denied this allegation and a tour for the WJP was arranged. Ms. Saunders told the committee that women inmates are not provided information regarding their release dates so they are unable to make arrangements. Also, the overnight visitation programs are not being implemented; and, the parenting and GED courses for women inmates overlap so that an inmate cannot attend both. According to WJP, there is a lack of care for trauma, substance abuse and gynecological issues. Angie Vachio, WJP, reiterated to the committee that there is no reentry planning, nor are there halfway houses or intermediate sanctions available for women inmates.

Lisa Zaren, WJP, provided the committee with information regarding La Bodega program, a community partnership program created in New York. La Bodega is a family case-management model. The founding disciplines of La Bodega program are family systems, strength, case management and community partnership.

Public Comment

The committee heard comments from Tilda Sosaya, who shared her concern that inmates are not receiving a proper diet or proper medical care.

Site Tour of Guadalupe County Correctional Facility

Committee members, staff and members of the public visited the Guadalupe County Correctional Facility.

The committee recessed at 5:45 p.m.

Thursday, July 26

Prisoner Hearing Procedures and Life Paroles

John Walker, attorney, discussed problems with inmate disciplinary hearing procedures. Mr. Walker stated that inmates are routinely denied an opportunity to present evidence due to the NMCD policies, and he provided two examples from Lea County. Nick D'Angelo, general counsel for the NMCD, responded that the department's regulations were crafted as a compromise in a lawsuit brought on behalf of inmates. Mr. Walker also discussed life sentences and parolees who were sentenced and paroled under the former law and requested an update in the law for those parolees.

Probation and Parole Barriers to Reentry

Ms. Sosaya, a prisoner rights and family advocate, shared her personal story regarding her son's imprisonment. Her son has been in jail for 10 years for armed robbery and she believes he is not fed properly and that visitation rights are insufficient. She shared that her son cannot get out of level 5 security due to prison administration policies and confusion. Secretary Williams pointed out to the committee that Ms. Sosaya's son has a history of bad behavior within the prison. Ms. Sosaya informed the committee that inmates placed on probation or parole are paying more than is statutorily mandated to be monitored by probation or parole.

Inmate Access to Legal Forms and Documents

Margaret Blonder, a law student at the University of New Mexico (UNM) School of Law, reported to the committee that inmates have access to domestic forms; however, inmates must hand-copy these forms, and the forms can be lengthy and require several copies. Upon committee inquiry, Secretary Williams agreed to allow inmates to use copiers for domestic forms if they pay for the copies themselves.

Local Government Funding of Jails and the Espanola Jail

Tasia Young, Steve Kopelman, Tito Chavez, Regina Romero and various administrators of county detention centers introduced themselves to the committee and participated in the discussion. Ms. Young, New Mexico Association of Counties, reported to the committee that cooperation between the New Mexico Association of Counties and the New Mexico Municipal League has increased. Ms. Young suggested an expansion of the Local Government Corrections Fund and the local gross receipts tax to improve funding. New Mexico is one of seven states where more than 50% of incarcerated persons (over 6,700) are held in local jails. Jail operating budgets can consume 25% to 40% of county budgets.

Mr. Kopelman, risk manager for the association, reiterated that jails take the majority of county general fund money. He also said that inmates with mental health and substance abuse problems should not be housed in county jails and that parole violators are the state's responsibility but are in county jails. All of the jails are overcrowded and, on average, are at 95% capacity. Approximately 50% of the inmates in county jails are arrested for municipal crimes, and cities reimburse counties for incarcerating municipal law detainees and violators. Medical care is not reimbursed by Medicaid and transportation is highly expensive. Ms. Romero, New Mexico Municipal League, added that the municipality's role is to enforce state and local laws, not to incarcerate. Also, the arrest and transportation of violators is a municipal responsibility.

Alice Lucero, mayor pro tem, City of Espanola, and Julian Gomez, chief of police, City of Espanola, discussed the problems faced by the city's jail, the costs of transporting prisoners to Gallup and other locations, and the need for funding for the city or the county to house prisoners adequately.

Bernalillo County Jails: Funding and Overcrowding

Alan Armijo, Bernalillo County Commission chair, told the committee that Bernalillo County is working to reduce the cost of jails without risking safety. He also noted that decriminalization of minor traffic violations may help reduce the jail population. Bruce Pearlman, chief administrative officer for the City of Albuquerque, reported that the city has been collaborating with the county and fully supports acceptable alternatives and innovative solutions. Debbie O'Malley, Albuquerque City Council president, spoke about the controversy surrounding the city's decision to provide \$9 million to the county for the Bernalillo County Metropolitan Detention Center.

Judge Victoria Grant, presiding criminal judge of the Bernalillo County Metropolitan Court (BCMC), gave the committee an overview of initiatives that the metropolitan court established to reduce inmate overpopulation. She informed the committee that the initiatives to establish alternative community courts was successful, and there is now a homeless court, mental health court, domestic violence court, drug court and Native American drug court. These alternative courts aim for early intervention to avoid incarceration and to help reduce recidivism. Judge Theresa Gomez, BCMC, added that arraignments are conducted seven days a week, and that the court is discussing conducting them twice a day.

Judge William Lang, chief judge of the Second Judicial District Court, reported to the committee that there is a need for treatment and diversion and that drug court is a proven success. He also informed the committee that often, the behavior is ingrained in the offender and that offenders are in need of more substance abuse treatment and mental health counseling.

John Dantis, deputy county manager for public safety in Bernalillo County, told the committee that the county supervises 3,000 inmates per day and has a community custody program. Mr. Dantis explained how the responsibilities for the building and operation of jails are with the counties, yet the counties do not have the legal authority to manage and operate their

jails successfully; although there are more county jail inmates than state prisoners, the counties are not given the discretion they need to manage the population. He discussed House Bill 636, which did not pass last session, and how it addressed these issues.

Mark Lowry, attorney with the Rothstein law firm, recommended that the discretion to control "good time" by metropolitan judges be removed from statute. District judges have no control over "good time" of inmates because that is a mechanism used to assist the NMCD to manage its prisons. He also suggested instituting mandatory jail reduction mechanisms, as other states are doing.

The committee adjourned at 4:00 p.m.